

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Miller, Lawrence Franklin

Miller, Kim Anh

BKY Case No. 07-40794

Ch. 13

Debtor(s)

**NOTICE OF HEARING AND MOTION FOR CONFIRMATION
OF MODIFIED CHAPTER 13 PLAN**

TO: The Chapter 13 Trustee, The United States Trustee and the Creditors and Parties in Interest listed on the Service List.

1. The debtors above-named, moves the court for the relief requested below and gives Notice of Hearing.
2. The court will hold a hearing on this motion at 10:30 a.m. o'clock on February 3, 2011 in Courtroom No. 7 West, , at the United States Courthouse located at 300 South 4th St. Minneapolis, MN 55415.
3. Any response to this motion must be filed and delivered not later 7/18/2009 including intermediate Saturdays, Sundays and legal holidays, which is five days before the hearing or mailed not later than 1/30/2011 which is five days before the hearing. The objection shall be filed not later than one day after service. **UNLESS A RESPONSE**

**OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT
THE MOTION WITHOUT A HEARING.**

4. The petition commencing this Chapter 13 case was filed on March 12, 2007 . This case is now pending in this court. The debtor(s) commenced payments under the Chapter 13 Plan in April 2007. The debtor has proposed a 60 month plan. The last payment is due in March 2012.

5. This motion arises under 11 U.S.C. §1329. This motion is filed under Bankruptcy Rule 9013 and Local Rules 3019-2 and 9013-1 through 9013-3. Movant requests relief with respect to a post-confirmation modification of the Chapter 13 Plan. The modified plan does not propose to change any payments so amended schedules I and J are not required..

6. A separate memorandum of fact and law is submitted along with this motion in addition to a copy of the Modified Chapter 13 Plan.

7. Pursuant to Local Rule 9013-2(c), if testimony is necessary as to facts relevant to this motion, the debtor(s) will testify to all matters relating to this motion to modify the Chapter 13 Plan. The debtors address is as follows: 343 Pleasure Creek Dr., Blaine, MN 55434.

8. In the instant case, there has been a substantial change in circumstances for the debtors which requires a modification of the Chapter 13 Plan. The debtors' 2008 income tax returns were done incorrectly by their tax preparer resulting in an excessively large ,refund. The Chapter 13 Trustee seized both refunds to pay unsecured creditors. Later it was determined the debtors were not entitled to the refunds and they now owe 2008 federal income taxes. As a result they have a section 1305 priority claim. This

modification is designed to pay that priority claim with the remaining 15 months of payments. The unsecured claim are still getting the amount originally proposed by the extra funds paid into this plan due to the tax error.

WHEREFORE, the Debtors pray for an order confirming the modified Chapter 13 Plan.

Dated: 1/14/2011

/e/ Mark L Soule

Mark L Soule #172078
816 W St. Germain St.
Suite 306
St. Cloud, MN 56301
(320)-251-0999

VERIFICATION

We, Lawrence F. Miller and Kim A. Miller, under penalty of perjury, hereby states that

we has read the motion to Modify Chapter 13 Plan and states that the information contained herein is true and correct to the best of his information and belief.

Dated: 1-14-11

Dated: 1-14-11

Lawrence F. Miller

Kim A. Miller

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:
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Miller, Kim Anh BKY NO: 07-40794
 Debtor(s)

MEMORANDUM OF LAW

The underlying facts and reasons for the Debtor's Motion for modifying the Chapter 13 Plan Post-Confirmation is set forth in the Verified Notice of Motion and Motion.

On proper showing of changed circumstances a debtor may amend a Chapter 13 Plan under 11 U.S.C. §1329. In Re Davis, 34 B.R. 319, 320 (Bankr. E.D.VA. 1983).

Under 11 U.S.C. §1329(a)(1), a Chapter 13 Plan may be modified to increase or reduce the amount of payments on claims of a particular class provided for by the Plan, 11 U.S.C. §1329(a)(1). A modified Plan may also extend or reduce the time for such payments, change the amount of payments to creditors and alter distributions to a creditor to take into account any payments outside of the Plan, 11 U.S.C. §1329(a)(1), (2) and (3). The modified plan, however, may not contain any provisions which could not have been contained in the original Plan, 11 U.S.C. §1329(b)(1), nor extend beyond five years from the date of the original Plan, 11 U.S.C. §1329(c).

In the instant the debtor proposes to maintain the same payments under the modified plan for the remaining 15 months but propose to add a Section 1305 priority claim to the Internal Revenue Service. The claim arose from a tax preparation error on the debtors 2008 federal income tax return which resulted in a large refund that was taken

by the Chapter 13 Trustee's office to pay claim under this plan. Rather than request a
refun from the Chapter 13 Trustee's office the debtor is proposing to pay this claim with
the remaining funds that are to be paid into the plan. The amount of the 1305 claim is
\$2452.00.

Dated: 1/14/2011

/e/ Mark L. Soule
Mark L. Soule Reg No. 172078
Attorney at Law
816 West St. Germain #306
St. Cloud, MN 56301
(320)-251-0999

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:
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BKY Case No: 07-40794

Debtor(s).

ORDER CONFIRMING MODIFIED CHAPTER 13 PLAN

It appears that the debtor(s) filed a modified chapter 13 plan, that the plan conforms to Local Rules 3015-1 through 3020-3 and Local Form 3015-1, that copies thereof were mailed to creditors, that a meeting of creditors was held, that a hearing on confirmation of the plan was held, that no objections to the confirmation of the plan as filed or as modified by an amended plan has been made, or if made, has been since withdrawn or overruled by the court.

IT IS THEREFORE ORDERED, that the plan as filed or as modified by an amended plan is confirmed.

Dated:

Nancy C. Dreher
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNSOTA

In Re:
Miller, Lawrence Franklin
Miller, Kim Anh Debtors

BKY No.: 07-40794

CERTIFICATE OF SERVICE

Mark L. Soule, hereby certify that on the 18th day of January, 2011, I served by first class mail and electronic transmission the following documents: Modified Chapter 13 Plan (post-confirmation), Notice of Hearing and Motion for confirmation of a Modified Plan, Order, Memorandum, upon all of the parties on the attached Service List.

Dated: 1/18/2011

/e/Mark L. Soule
Mark L. Soule, Reg. 0172078
Attorney at Law
816 West St. Germain #306
St. Cloud, MN 56301
(320) 251-0999

Service List

Jasmine Keller, Trustee
310 Plymouth Bldg.
12 South 6th St.
Minneapolis, MN 55402

Associated Creditors
PO Box 33130
Phoenix, AZ 85067

Citifinancial
PO Box 140069
Irving, TX 75014

US Trustee
1015 US Courthouse
300 South 4th St.
Minneapolis, MN 55415

Beneficial Finance
PO Box 4153-K
Carol Stream, IL 60197

Citifinancial
12410 Aberdeen St. NE
Blaine, MN 55449

Internal Revenue Service
115 4th Avenue SE
Aberdeen, SD 57401

Beneficial Finance
PO Box 1547
Chesapeake, VA 23320

Columbia Park Med Group
4000 Central Avenue NE
Columbia Heights, MN 55421

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101

CapitalOne
15000 Capital One Drive
Richmond, VA 23238

DASI
600 Coon Rapids Blvd.
Coon Rapids, MN 55433

Allina Home Oxygen
c/o Reliance Recovery
PO Box 29227
Minneapolis, MN 55429

Central Credit Svc
Dept. A
PO Box 15118
Jacksonville, FL 32239

Discover Card
PO Box 30395
Salt Lake City, UT 84130

Aspire Visa
PO Box 23007
Columbus, OH 31902

EPPA
7301 Ohms Lane #650
Edina, MN 55439

Metropolitan Cardiology
4040 Coon Rapids Blvd. #120
Minneapolis, MN 55433

Pinnacle Financial
7825 Washington Ave So. #410
Minneapolis, MN 55439

Sears
PO Box 6924
The Lakes, NV 88901

TDM
PO Box 6700
Norcross, GA 30091

Principal Bank
PO Box 857
Des Moines, IA 50304

Suburban Radiology
4801 West 81st St. #108
Minneapolis, MN 55437

Unity Hospital
Allina
2925 Chicago Ave So
Minneapolis, MN 55407

US Bank
4801 Frederica St.
Owensboro, KY 50306

Wells Fargo Card Svc
PO Box 10347
Des Moines, IA 50306

Wells Fargo Financial
3201 North Fourth Avenue
Sioux Falls, SD 57104

Wells Fargo Visa
PO Box 10347
Des Moines, IA 50306

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Miller, Lawrence Franklin
Miller, Kim Anh

SIGNATURE DECLARATION

Debtor(s).

Case No. _____

- ☐ PETITION, SCHEDULES & STATEMENTS
☐ CHAPTER 13 PLAN
☐ SCHEDULES AND STATEMENTS ACCOMPANYING VERIFIED CONVERSION
☐ AMENDMENT TO PETITION, SCHEDULES & STATEMENTS
☒ MODIFIED CHAPTER 13 PLAN
☒ OTHER (Please describe: Motion for Confirmation of Modified Plan)

I [We], the undersigned debtor(s) or authorized representative of the debtor, ***make the following declarations under penalty of perjury:***

- The information I have given my attorney and provided in the electronically filed petition, statements, schedules, amendments, and/or chapter 13 plan, as indicated above, is true and correct;
- The information provided in the "Debtor Information Pages" submitted as a part of the electronic commencement of the above-referenced case is true and correct;
- **[individual debtors only]** If no Social Security Number is included in the "Debtor Information Pages" submitted as a part of the electronic commencement of the above-referenced case, it is because I do not have a Social Security Number;
- I consent to my attorney electronically filing with the United States Bankruptcy Court my petition, statements and schedules, amendments, and/or chapter 13 plan, as indicated above, together with a scanned image of this Signature Declaration and the completed "Debtor Information Pages," if applicable; and
- **[corporate and partnership debtors only]** I have been authorized to file this petition on behalf of the debtor.

Date: 1-14-11

x Lawrence F. Miller
Signature of Debtor or Authorized Representative

Lawrence F. Miller
Printed Name of Debtor or Authorized Representative

x Kim A. Miller
Signature of Joint Debtor

Kim A. Miller
Printed Name of Joint Debtor